THE HON'BLE Ms. JUSTICE G.ROHINI

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WRIT PETITION NO: 21852 of 2006

Dated: 13-11-2006

Between:

M/s Shivani Engineering Industries,

Rep., by its Managing Partner,

Hyderabad.

..... PETITIONER

AND

Andhra Pradesh State Road Transport

Corporation, rep., by its Vice Chairman,

Managing Director, Hyderabad and two others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

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WRIT PETITION NO: 21852 of 2006

O R D E R:

The second respondent herein, (Andhra Pradesh State Road Transport Corporation, rep., by its Chief Mechanical Engineer, Chassis and Bodies), issued the tender notice dated 19-06-2006 inviting sealed tenders for fabrication and mounting of bus bodies on the chassis supplied by the Corporation. The last date for issuance of tender documents was 22-07-2006 and the sealed tenders were scheduled to be opened on 27-07-2006. Pursuant thereto, the petitioner had also submitted its tender within the time fixed. However, the petitioner came to know that the respondent-Corporation addressed letters to several persons similarly situated like that of the petitioner firm, offering to issue orders in their favour provided they accept the rate of Rs.4.50 lakhs per bus body in respect of Tata 218 WB. Since the petitioner did not receive any such intimation, he addressed letter dated
11-07-2006 requesting to place the supply orders at the adhoc rate of Rs.5.00 lakhs per bus body and that the final rates may be fixed after the finalisation of the tenders. There was no response from the respondents, but it is learnt by the petitioner that the tenders were opened on 27-07-2006 and thereafter, the respondent-Corporation had again addressed letters to the persons similarly situated like that of the petitioner asking their willingness for building the bus body in respect of Tata 218 WB at the adhoc rate of Rs.5.00 lakhs per bus body. The petitioner by letter dated
09-08-2006 while expressing protest informed the respondents that it is also interested to fabricate bus bodies at the adhoc price of Rs.5.00 lakhs per bus body.

Since the respondent-Corporation failed to consider its offer but made further offers to others fixing the price of Rs.5,15,500/- for express bus body of Tata 218 WB chassis and Rs.5,27,000/- for AV 22/210 WB chassis as tentative price, this writ petition is filed seeking a *Mandamus* declaring the action of the respondents in not negotiating with the petitioner on par with others who are similarly situated and not awarding contract to the petitioner in respect of tender notification dated 19-06-2006 as arbitrary and illegal and consequently to direct the respondents to consider the case of the petitioner on par with others who are similarly situated.

It is to be noted that prior to filing of the writ petition, the petitioner made an application under the Right to Information Act, 2005 (for short 'the Act') requesting the respondents to furnish the information mentioned therein. Alleging that the said information was not furnished, the petitioner sought for a further direction that the action of the respondents in not supplying the information sought by it is also arbitrary and illegal.

In the counter affidavit filed on behalf of the respondents, it is stated that in the year 2000, a Supply Order dated 17-12-2000 was placed on the petitioner for similar purpose of fabrication of bus bodies for 52 Tata ordinary buses and 29 AV express sub bodies. However, the petitioner supplied only 13 chassis out 29 AV express bus bodies leaving a backlog of 15 chassis. Again in the year 2003, the petitioner firm was offered similar work, but the petitioner could not complete the work on 6 chassis. In the circumstances, after issuing a show cause notice by order dated 02-04-2004 the respondent-Corporation had withdrawn the supply order placed on the petitioner and the chassis were also withdrawn from the petitioner's premises on 03-04-2004. In view of the default committed by the petitioner, the Corporation was compelled to got the fabrication work through some other fabricators incurring huge expenditure. The loss suffered by the Corporation could not be recovered from the petitioner-firm.

So far as the allegation of the petitioner that the Corporation had negotiated with

selected persons, it is stated that for the purpose of taking up the bus bodies on adhoc rates in view of the urgent requirement of new buses towards augmentation and replacement, the Corporation had requested some of the firms which have continuously fabricated buses to the Corporation and successfully completed the orders. No such offers were given to the firms, which have not completed their earlier orders. Besides the petitioner, three other firms were not given supply orders on the said ground.

Thus, it is contended that the Corporation never acted in pick and choose manner and all the firms which were having backlog orders, including the petitioner firm, were excluded from the negotiations. It is also stated that the Negotiations Committee had applied uniform principle in not giving orders to the firms who have not completed the bus body fabrication orders allotted through earlier tenders.

Accordingly, some of the firms were communicated about the rates arrived at and after obtaining their willingness, the proposals were processed and placed before the Finance Works and Purchase Committee of the Corporation. The matter is now pending before the said Committee and decision is yet to be taken.

In the affidavit filed by the petitioner in Reply, the allegation that there is a backlog with the petitioner firm has been denied contending that the respondent-Corporation itself failed to supply the chassis to the petitioner without assigning any reasons and the default, if any, on the part of the petitioner was only due to non-supply of the chassis by the respondent-Corporation. It is further stated that a sum of Rs.3,21,000/- is payable to the petitioner by the respondents in respect of 10 bus bodies delivered to the respondents in respect of tender notification dated No.1/2000. The petitioner sent the invoice dated 20-03-2004 for the said purpose and the same was duly acknowledged by the respondents, however, the payment has not been made and consequently invoking the provisions of the Delayed Payments to Small Scale Industries Act, 1993, the petitioner made a petition before the Andhra Pradesh Industry Facilitation Council, Hyderabad on
29-05-2004 and the matter is ceased by the authority. Hence, the allegation that the petitioner was not regular in completing the orders and failed to complete the orders given to them is false and baseless.

I have heard the learned counsel for both the parties and perused the material on record.

It is to be noted that pursuant to the tender notice dated 1/2004 issued by the Corporation for award of similar nature of work, the petitioner was one of the participants. Aggrieved by the action of the Corporation in deciding to call the first 15 lowest tenderers for negotiations thereby eliminating the petitioner from negotiations, the petitioner earlier field W.P.No.553 of 2005. The said writ petition was dismissed by this Court by order dated
25-03-2005 holding that since admittedly the petitioner did not come within the first 15 lowest quoted tenderers, the action of the Corporation cannot be said to be un-fair towards the petitioner. Though the petitioner preferred W.A.No.953 of 2005, the same was dismissed by Division Bench of this Court by judgment dated
04-01-2006. In an elaborate judgment, the Division Bench, while reviewing the decided cases relating to the scope of the interference by this Court in contractual matters, held that the Corporation had not acted arbitrarily and there was no discrimination as alleged by the petitioner.

That apart admittedly the petitioner was earlier awarded similar work, which could not be successfully completed. Though the petitioner contended that the default, if

any, was only due to the lapses on the part of the Corporation, the said question needs no consideration in this writ petition but the fact remains that the performance of the petitioner was not up to the satisfaction of the Corporation. It is also clear from the material on record that not only the petitioner, but other tenderers who could not complete the work against the supply orders awarded to them earlier were also eliminated from consideration. The petitioner was also one among them. Hence, it cannot be said that the respondent-Corporation acted arbitrarily in violation of Article 14 of the Constitution of India.

The law is well settled that while awarding a contract it is always open to the tender inviting authority to take into consideration whether the person tendering has the ability to deliver the goods or services as per specifications. It is also open to the tender inviting authority to take into consideration the performance record of the tenderer while executing previous contracts of similar works. Such consideration cannot be said to be arbitrary or unreasonable.

For the aforesaid reasons, the contentions raised by the petitioner are devoid of any substance and accordingly, the writ petition is dismissed. No costs.

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G. ROHINI, J

Dated: 13-12-2006

KLP